

**UNITED STATES DISTRICT COURT
WESTERN DIVISION OF NORTH CAROLINA
CHARLOTTE DIVISION
Case No. 3:24-CV-00137-RJC-DCK**

CMT USA, INC. and CMT UTENSILI S.p.A.,

Plaintiffs,

v.

APEX TOOL GROUP LLC and APEX
BRANDS, INC.

Defendants.

**DECLARATION OF ROBERT E.
COLLETTI, ESQ. IN SUPPORT OF
CMT'S MOTION TO EXCLUDE
OPINIONS AND TESTIMONY
OF APEX'S PROPOSED EXPERT
DAVID FRANKLYN**

I, Robert E. Colletti, hereby declare as follows:

1. I am a partner of the law firm Haug Partners, 745 Fifth Avenue, New York, New York, 10151, and counsel for Plaintiffs CMT USA, Inc. and CMT Utensili, S.p.A. (collectively, "Plaintiffs" or "CMT"), in this action.

2. I submit this declaration based on my personal knowledge and in support of CMT's Motion to Exclude Certain Opinions and Testimony of David Franklyn. I further submit this declaration to place before the Court true and accurate copies of certain documents.

I. CMT Expert Witness Documents

1. Attached hereto as **Exhibit A** is a true and accurate copy of pages excerpted from the deposition transcript of Thomas J. Maronick, DBA, JD, CMT's survey expert, dated January 31, 2025.

II. Apex Expert Witness Documents

2. Attached hereto as **Exhibit B** is a true and accurate copy of Appendix C from the Expert Report of David Franklyn, Apex's purported survey expert, dated November 22, 2024

3. Attached hereto as **Exhibit C** is a true and accurate copy of pages excerpted from Appendix D from the Expert Report of David Franklyn, Apex's purported survey expert, dated November 22, 2024.

4. Attached hereto as **Exhibit D** is a true and accurate copy of data excerpted from Appendix E from the Expert Report of David Franklyn, Apex's purported survey expert, dated November 22, 2024. This exhibit has been annotated at my direction to include a column titled "Indicates Reading Test."

5. Attached hereto as **Exhibit E** is a true and accurate copy of data excerpted from Appendix E from the Expert Report of David Franklyn, Apex's purported survey expert, dated November 22, 2024. This exhibit has been annotated at my direction to include a column titled "Indicates Reading Test."

6. Attached hereto as **Exhibit F** is a true and accurate copy of pages excerpted from the Expert Sur-Rebuttal Report of David Franklyn, submitted by Phi Theta Kappa Honor Society in the case of *Phi Theta Kappa Honor Society v. Honor Society.org, Inc., et. al.*, No. 3:22-cv-00208-CWR-RPM (S.D. Miss.), D.I. 453-1, dated November 26, 2024. This report was publicly filed on PACER by counsel for Phi Theta Kappa Honor Society on February 28, 2025, and retrieved by a member of my staff on or about March 6, 2025.

7. Attached hereto as **Exhibit G** is a true and accurate copy of pages excerpted from the Deposition Transcript of David Franklyn, submitted by Kodiak Cakes, LLC in the case of Kodiak Cakes, LLC v. JRM NutraSciences, LLC, No.2:20-cv-00581-DBB-JCB (D. Utah.), D.I. 93-3, dated May 17, 2022. This report was publicly filed on PACER by counsel for JRM NutraSciences on July 19, 2022, and retrieved by a member of my staff on or about March 6, 2025.

8. Attached hereto as **Exhibit H** is a true and accurate copy of pages excerpted from the Opening Expert Report of David Franklyn, submitted by Kodiak Cakes, LLC in the case of Kodiak Cakes, LLC v. JRM NutraSciences, LLC, No.2:20-cv-00581-DBB-JCB (D. Utah.), D.I. 93-1, dated November 1, 2021. This report was publicly filed on PACER by counsel for JRM NutraSciences on July 19, 2022, and retrieved by a member of my staff on or about March 6, 2025.

9. Attached hereto as **Exhibit I** is a true and accurate copy of pages excerpted from the Deposition Transcript of David Franklyn, submitted on behalf of Emerson Radio Corporation in the case of *Emerson Radio Corporation v. Emerson Quiet Kool Co., Ltd. et al*, No. 1:20-cv-01652-LPS (D. Del.), D.I. 184-5, dated November 6, 2020. This report was filed publicly on PACER by counsel for Emerson Radio Corporation on August 12, 2021 and retrieved by a member of my staff on or about March 6, 2025.

10. Attached hereto as **Exhibit J** is a true and accurate copy of pages excerpted from

the Expert Report of David Franklyn, submitted on behalf of Treaty Oaks in the case of *Waterloo Sparkling Water Corp. v. Treaty Oak Brewing and Distilling Co. LLC*, No. 1:21-cv-00161-RP (W.D. Tex.), D.I. 41-6, dated June 17, 2021. This report was filed publicly on PACER by counsel for Treaty Oak Brewing and Distilling Co. on June 17, 2021 and retrieved by a member of my staff on or about March 6, 2025.

11. Attached hereto as **Exhibit K** is a true and accurate copy of pages excerpted from the Order on Motions In Limine [#189, 191, 192] in the case of *Jaguar Land Rover Ltd. v. Bombardier Recreations Products, Inc.*, No. 16-cv-13386 (E.D. Michigan), D.I. 222, dated January 4, 2019. This order was publicly filed on PACER on January 4, 2019 and retrieved by a member of my staff on or about March 6, 2025.

12. Attached hereto as **Exhibit L** is a true and accurate copy of pages excerpted from the Rebuttal Report of David Franklyn to Gregory Carpenter, submitted on behalf of Bombardier Recreational Products, Inc. in the case *Jaguar Land Rover Ltd. v. Bombardier Recreations Products, Inc.*, No. 16-cv-13386 (E.D. Michigan), D.I. 191-10, dated November 2018. This report was filed publicly on PACER by counsel for Bombardier Recreational Products, Inc., on December 4, 2018 and retrieved by a member of my staff on or about March 6, 2025.

III. Miscellaneous Documents

13. Attached hereto as **Exhibit M** is a true and accurate copy of pages excerpted from TRADEMARK AND DECEPTIVE ADVERTISING SURVEYS (Shari S. Diamond & Jerre B. Swann, eds., 2d ed. 2022).

14. Attached hereto as **Exhibit N** is a true and accurate copy of pages excerpted from D.F. Alwin, MARGINS OF ERROR: A STUDY OF RELIABILITY IN SURVEY MEASUREMENT (2007).

15. Attached hereto as **Exhibit O** is a true and accurate copy of pages excerpted from R.M. GROVES, SURVEY ERRORS AND SURVEY COSTS (Robert M. Grove et. al. eds., 2004).

16. Attached hereto as **Exhibit P** is a true and accurate copy of H. Poret, *An Empirical Assessment of the Eveready Survey's Ability to Detect Significant Confusion in Cases of Senior Marks That Are Not Top-of-Mind*, 109 TMR 935 (2019).

17. Attached hereto as **Exhibit Q** is a true and accurate copy of I. Simonson, *The Effect of Survey Method on Likelihood of Confusion Estimates: Conceptual Analysis and Empirical Test*, 83 TMR 364 (1993).

18. Attached hereto as **Exhibit R** is a true and accurate copy of American Association

for Public Opinion Research, *Margin of Sampling Error/Credibility Interval*, <https://aapor.org/wp-content/uploads/2023/01/Margin-of-Sampling-Error-508.pdf> (last visited May 9, 2025).

19. Attached hereto as **Exhibit S** is a true and accurate copy of U.S. Census Bureau, *Understanding and Using American Community Survey Data: What All Data Users Need to Know* 75 (U.S. Government Publishing Office, Washington DC, 2020).

20. Attached hereto as **Exhibit T** is a true and accurate copy of U.S. Bureau of Labor Statistics, *Table A-13. Employed and unemployed people by occupation, not seasonally adjusted*, <https://www.bls.gov/news.release/empst.t13.htm> (last visited May 9, 2025).

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate.

Dated: May 9, 2025

/s/ Robert E. Colletti
Robert E. Colletti, Esq.